

REMARKS

Upon restriction, the Examiner had categorized the original claims into 18 groups, the first group (Group I) was directed to “DNA encoding a phospholipase, host cell comprising thereof and method of producing polypeptide”. Applicants elected this group and submitted a preliminary amendment canceling claims 1-23 and adding claims 24-41 directed to isolated nucleic acid molecules and host cells comprising said nucleic acid molecules. Upon submission of the preliminary amendment, Applicants inadvertently omitted claims directed to methods of producing polypeptides and thus Applicants have added such claims herein, namely claims 42-47. Addition of these claims does not introduce new matter and does not require that the Examiner perform any additional searches.

Support for claims 42-47 can be found in original claim 6 as well as on pages 50-54 of the specification. Claim 29 was additionally amended in order to correct a dependency. No new matter has been presented by way of this claim amendment.

Claims 1-23 were previously canceled and claims 24-41 were previously added. Applicants have now added claims 42-47. Therefore, claims 24-47 are now pending.

Applicants gratefully acknowledge the Examiner's indication that claims 24-29 and 39-41 are allowable.

REJECTION OF CLAIMS 30-32 AND 36-38 UNDER 35 U.S.C. §101

Claims 30-32 and 36-38 were rejected under 35 U.S.C. §101, because the Examiner states that the claimed invention is directed to non-statutory subject matter.

Specifically, the Examiner states that “The claims read on a product of nature, a naturally occurring cell or a composition comprising the cell (human). The Examiner suggests that this may be overcome by amending claims 30-32 as “A non-mammalian host cell...”

Applicants respectfully traverse this rejection as claims 30-32 are directed to host cells which contain the nucleic acid molecule of claims 24-26, which are specifically directed to isolated nucleic acids. According to the definition of isolated nucleic acids on page 18 of the specification, an isolated nucleic acid “includes nucleic acid molecules which are separated from

other nucleic acid molecules which are present in the natural source of the nucleic acid". The host cells of claims 30-32 therefore do not read on products of nature since the isolated nucleic acid molecule contained within the host cells is separated from other nucleic acid molecules which are present in the natural source of the nucleic acid. Therefore, such host cells are not naturally occurring entities.

In light of the fact that claims 30-32 and 36-38 are directed to host cells containing isolated nucleic acids, Applicants respectfully request reconsideration and withdrawal of the foregoing rejection.

#### CONCLUSIONS

In view of the remarks made herein, Applicants respectfully submit that the rejection presented by the Examiner is now overcome and that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is believed that this paper is being filed timely, and no extensions of time are required. In the event any additional extensions of time are necessary, the undersigned hereby authorizes the requisite fees to be charged to Deposit Account No. 501668.

Entry of the remarks made herein is respectfully requested.

Respectfully submitted,

June 26, 2003

MILLENNIUM PHARMACEUTICALS, INC.

By



Jean M. Silveri  
Registration No. 39,030  
75 Sidney Street  
Cambridge, MA 02139  
Telephone - 617-679-7336  
Facsimile - 617-551-8820